

1 THE HONORABLE RICHARD A. JONES  
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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

11  
12 MARK DAVISCOURT,

CASE NO. C18-cv-001148 RAJ

13  
14 v. Plaintiff,

ORDER DENYING PLAINTIFF'S  
MOTION TO VACATE JUDGMENT

15  
16 GWANNETTE M. CLAYBROOK, *et. al.*,

17 Defendants.

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19 THIS MATTER comes before the Court on Plaintiff's Motion to Vacate Judgment  
20 under Federal Rules of Civil Procedure 60(d)(3) ("Motion"). Dkt. # 53. Defendant United  
21 States filed a Response. Dkt. # 54, and Plaintiff filed a Reply. Dkt. # 58. For the reasons  
22 stated below, the Motion is **DENIED**.

23  
24 On January 28, 2019, Defendants filed a motion to dismiss for failure to state a  
claim and lack of subject matter jurisdiction. Dkt. # 18. Defendants argued the complaint  
25 should be dismissed because they enjoy qualified immunity from Plaintiff's inability to  
state a *Bivens* conspiracy claim. *Id.* at 13-24. On July 31, 2019, the Court granted  
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28 ORDER – 1

1 Defendants' motion to dismiss but allowed Plaintiff to file an amended complaint. Dkt. #  
 2 38. Plaintiff failed to do so, and the Court entered judgment in favor of Defendants. Dkt.  
 3 # 39-40. Plaintiff appealed the Court's judgment, Dkt. # 41, which was then affirmed by  
 4 the Ninth Circuit. Dkt. # 43-44.

5 On January 30, 2023, Plaintiff filed the present Motion pursuant to Rule 60(d)(3).  
 6 Dkt. # 53. Plaintiff argues that the judgment should be vacated because the United States  
 7 committed fraud on the court when it (1) injected itself into the case and influenced the  
 8 Court by filing defective Notice of Appearances in both this Court and the Ninth Circuit;  
 9 and (2) abandoned its judgment obtained in *United States v. Davis court*, 2:16-00290-  
 10 RSM (W.D. Wash. 2016) by failing to pursue additional collection activity. *See id.* at 4-  
 11 12. Moreover, Plaintiff alleges the IRS's referral to the Department of Justice and letters  
 12 regarding Plaintiff's multiple Office-In-Compromise ("OIC") letters were fraudulent. *Id.*  
 13 at 4-9. Additionally, in his Reply, Plaintiff again attacks Defendants' standing.<sup>1</sup> Dkt. #  
 14 58.

15 FRCP 60(d)(3) permits courts to set aside judgments for fraud on the court.  
 16 *Pizzuto v. Ramirez*, 783 F.3d 1171, 1180 (9th Cir. 2015). The term "fraud on the court" is  
 17 construed narrowly. *McGary v. Inslee*, No. C15-5840 RBL-DWC, 2017 WL 1929790, at  
 18 \*2 (W.D. Wash. May 10, 2017). There is a distinction between mere fraud and fraud on  
 19 the court. *U.S. v. Estate of Stonehill*, 660 F.3d 416, 444 (9th Cir. 2011). "In determining  
 20 whether fraud constitutes fraud on the court, the relevant inquiry is not whether  
 21 fraudulent conduct "prejudiced the opposing party," but whether it "harm[ed] the  
 22 integrity of the judicial process." *Id.* (quoting *Alexander v. Robertson*, 882 F.2d 421, 424  
 23 (9th Cir. 1989)). For a judgment to be set aside for fraud on the court, the plaintiff must  
 24 show, by clear and convincing evidence, an "unconscionable plan or scheme which is

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 26 <sup>1</sup> As this Court explained in its July 2019 Order Granting Defendants' Motion to Dismiss,  
 27 "any lawsuit against an agency of the United States or against an officer of the United States in  
 28 his or her official capacity is considered an action against the United States." *Balser v. Dep't of  
 Justice*, 327 F.3d 903, 907 (9th Cir. 2003); *see also* ECF. No. 38 at 8.

1 designed to improperly influence the court in its decision.” *Pizzuto*, 783 F.3d 1171 at  
2 1180.

3 First, Plaintiff claims the United States committed fraud on the Court when it  
4 allegedly tried to influence the Court by filing Notices of Appearances in this Court and  
5 the Ninth Circuit. Dkt. # 53 at 2. This argument is meritless. Any alleged  
6 misrepresentation must go “to the central issue of the case” and must “affect the  
7 outcome” of the case. *United States v. Sierra Pacific Industries, Inc.*, 862 F.3d 1157,  
8 1168 (9th Cir. 2017). The central issue in this case is the IRS’ efforts to recover unpaid  
9 income taxes from the 2000 calendar year from Plaintiff and his wife. *See* Dkt. # 1 at Ex.  
10 12. The inclusion of the United States as a defendant in the case captain of the Notices is  
11 not a central issue to the case nor can Plaintiff present any facts that it affected the  
12 outcome or harmed the integrity of the judicial process. The Notice filed with this Court  
13 includes the same list of defendants that Plaintiff named in his complaint and clearly  
14 states they are represented by the United States. *See* Dkt. # 51. The Notices did not  
15 contain any new information that was included to improperly influence the Court. As  
16 such, Plaintiff cannot show fraud on the court.

17 Second, Plaintiff claims the United States committed fraud on the court when it  
18 abandoned its judgment in *United States v. Daviscourt*, 2:16-00290-RSM (W.D. Wash.  
19 2016) by failing to pursue additional collection activity. Dkt. # 53 at 4-12. Again, this  
20 argument is meritless. Plaintiff argues that when the United States refunded him for an  
21 overpayment, it essentially abandoned its judgment. *See id.*, Ex. 21-24. Put simply,  
22 Plaintiff cannot show by clear and convincing evidence that the existence of the United  
23 States’ judgment against him in *United States v. Daviscourt* improperly influenced the  
24 court in its decision. In fact, Plaintiff cannot show the Court even considered the  
25 existence of the judgment at all when making its decision. Plaintiff’s argument fails.

26 Lastly, Plaintiff alleges the (1) Department of Justice fraudulently concealed the  
27 IRS’s referral from this Court and the Ninth Circuit, and (2) the IRS fraudulently  
28 ORDER – 3

1 declined to consider Plaintiff's multiple OICs due to ongoing litigation. *See id.* at 5-9.  
 2 Yet again, Plaintiff's arguments are meritless. First, Plaintiff's fraudulent referral  
 3 argument stems from a letter from the IRS to Plaintiff that states it does not have  
 4 "authority to approve an [OIC] when the federal tax liability [Plaintiff] owe[s] has been  
 5 reduced to judgment." *Id.* at 6. Plaintiff's use of this quote to prove improper referral to  
 6 this Court and the Ninth Circuit demonstrates a misapplication of law to fact. The IRS  
 7 can refer any civil or criminal case to the Department of Justice for prosecution or  
 8 defense. *See* 26 U.S.C.A. § 7122(a). That is exactly what occurred in this case. *See* Dkt. #  
 9 38 at 3 ("[T]he United States filed suit in this Court to reduce the assessments to  
 10 judgment."). Plaintiff has not and can not present any evidence that the referral was  
 11 improper, made in retaliation, or inappropriately concealed.<sup>2</sup> Therefore, Plaintiff cannot  
 12 show by clear and convincing evidence that there was fraud on the court based on the  
 13 IRS's referral of this matter to the Department of Justice.

14 Further, Plaintiff's assertion that the IRS fraudulently declined to consider his  
 15 OICs due to ongoing litigation demonstrates another misapplication of law to fact.  
 16 Pursuant to 26 U.S.C.A. § 7122(a), the IRS may negotiate and settle any civil or criminal  
 17 case prior to referral to the Department of Justice. Therefore, once the IRS referred to the  
 18 Department of Justice and the case was under the Department of Justice's jurisdiction, it  
 19 would be inappropriate for the IRS to consider any of Plaintiff's attempts to compromise  
 20 or settle the dispute. Once again, Plaintiff cannot present any facts that show any  
 21 improper conduct by the IRS or the Department of Justice. Plaintiff can only present  
 22 conclusory allegations of a fictional conspiracy. This is not enough to meet the high  
 23 burden required to show fraud on the court.

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26       <sup>2</sup> Plaintiff claims the referral was improper because it was based on "retaliation for  
 27 seeking the assistance of Senator Murray" and "concealed" from this Court and the Ninth  
 28 Circuit. *See* Dkt. # 53 at 5-9.

1 Plaintiff has failed to demonstrate by clear and convincing evidence that there was  
2 an “unconscionable plan or scheme which is designed to improperly influence the court  
3 in its decision” that “harm[ed] the integrity of the judicial process.” *See Estate of*  
4 *Stonehill*, 660 F.3d 416 at 444; *see also Pizzuto*, 783 F.3d 1171 at 1180. For this reason,  
5 Plaintiff’s Motion is **DENIED**.

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7 DATED this 12th day of May, 2023.

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The Honorable Richard A. Jones  
United States District Judge